Filed 2/27/19 In re C.S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re C.S., a Person Coming Under the Juvenile Court Law.	C086027
THE PEOPLE, Plaintiff and Respondent, v. C.S., Defendant and Appellant.	(Super. Ct. No. JV138683)

THE APPEAL

After the minor broke into an office at the Sacramento Children's Home and took approximately $85, the juvenile court found that he had committed felony vandalism and misdemeanor commercial burglary. The minor appeals arguing that the juvenile court erred to the minor's prejudice when it granted a continuance during the trial for the

prosecution to obtain a new witness and that the evidence is insufficient to support the court's finding as to either count. Because the trial court did not abuse its discretion in granting the continuance and because the evidence is sufficient to support the juvenile court's findings, we affirm the judgment.

FACTS

On May 17, 2017, the minor lived at the Sacramento Children's Home and he was due to be discharged the next day. Brandy Russell was a cottage supervisor there where the minor lived.

Children's Home residents can earn money by doing chores or work around the property; the money is placed in their individual accounts. The residents know the money is kept onsite. Russell's duties included handling residents' requests for money from their accounts.

On May 17, 2017, the minor spoke to Russell about obtaining money from his account. He did not receive it. Russell testified that he had about 90 dollars in the account but did not testify that she told him he had any particular amount there.

That evening, while working with other staffers, Russell heard a bang coming from a nearby building on the property. She and others ran toward the sound to investigate it. She saw the minor coming out of the building. The front door of the building and one of the interior office doors were found to be broken. An envelope containing approximately $85, which had been slipped under the door of a case manager earlier in the day and was intended for a different resident, was missing. Russell called the police.

Sacramento Police Officer Matthew Strickland met Russell and other staffers at the Children's Home. Russell said the minor committed the break-in and theft. The staffers pointed toward a pedestrian exit, where the minor and two others were leaving.

Officer Strickland and other officers spoke to the minors in a nearby parking lot. Officer Strickland found approximately $82 in the minor's right front pants pocket.

Officer Strickland put the minor in the back of the officer's patrol car, then took the minor's statement, which was recorded on the car's audio and video systems. The recording was introduced as an exhibit at the hearing, and a transcript was provided to the juvenile court.

According to the transcript (the accuracy of which is not disputed by the parties), the minor admitted taking the money found in his pocket after kicking in the front door of the building; he denied kicking in the interior door, claiming that it opened easily. He said he had asked Russell for the money in his account, which he thought was "like sixty, seventy probably," but Russell had not wanted to give it to him because she thought he had been "disrespectful."

Linda Norgard, the Children's Home maintenance supervisor, estimated it would cost approximately $1,750 to repair the damage to the doors completely. She had made "makeshift" repairs and the doors now locked, but damage remained, and there were parts missing. In Norgard's opinion, the doors would eventually have to be replaced which would not have been necessary before the damage was done. The estimate she received from a construction company she contacted included $1,000 for parts and labor to replace the exterior steel door and $750 for parts and labor to replace the interior door. Photographs of the doors were admitted into evidence.

Additional evidence is set out below.

LEGAL PROCEEDINGS

After a contested jurisdictional hearing, the juvenile court sustained a wardship petition alleging that minor committed felony vandalism (count 1; Pen. Code, § 594, subd. (b)(1) (statutory section references that follow are to the Penal Code unless

otherwise stated)) and misdemeanor commercial burglary (count 2; § 459). The court placed the minor on six months' probation with 40 hours of community service.

DISCUSSION

I

The Midtrial Continuance

The witness the prosecutor had expected to prove the felony charge of vandalism failed to do so. The juvenile court granted the prosecution a continuance during the trial in order to obtain and present the testimony of Norgard who had not been identified as a witness before trial. The minor contends the juvenile court abused its discretion in granting the continuance. According to the minor, had the continuance not been granted, the prosecution could not have proved felony damages on that count. We conclude the court did not abuse its discretion, and in any event the minor cannot show prejudice.

A. *Background*

The prosecution called John Glass, the Children's Home "trainer and recreation therapy manager" who was also the on-call manager after normal business hours on the date of this incident, to testify to the cost of repairing the damaged doors. But it turned out he had neither personal knowledge of the precise figure nor the expertise to give an estimate. Glass testified that he and Russell had talked on the phone about an estimate, and the prosecutor stated that he had a police report showing a conversation in which a specific figure was mentioned. The minor's counsel retorted that any information Glass gave the police came from Russell, not from his personal knowledge.

When Glass could not provide any figure based on his own knowledge, even after being shown the police report to refresh his recollection, the juvenile court concluded: "He was quite equivocal on whether he even remembered this conversation. It's questionable whether his recollection was refreshed at all. But we're right back to where

I thought we were heading. [¶] His opinion as to what the cost might have been is simply irrelevant since you haven't laid a foundation that he's capable of rendering such an opinion. So I think we're at the same dead end we were a minute ago." Glass was excused.

After calling his remaining scheduled witnesses, the prosecutor requested "a brief recess to call one final witness" and in the meantime to conclude for the day. Stating he was not sure at this point of the witness's availability, he requested a continuance until the next day at 3:00 p.m.

The minor's counsel objected that there was no showing of good cause for a continuance. She had not been informed of any other witness who might be called. She asserted: "[P]etitioner was unable to prove his case beyond a reasonable doubt here today in front of this Court, considering the state of the evidence, and petitioner would like a break in the proceedings in order to find a witness that can prove up the vandalism, subpoena that witness, and then bring them into court. [¶] At this point, there's not a witness, to my knowledge, that can testify to that. Petitioner doesn't know of who that could be, so I would ask that we proceed forward right now. We still have 25 minutes of court left. And I believe that petitioner doesn't have any further witnesses to present to this court."

Asked by the juvenile court if he was trying "to find a witness to shore up this evaluation of the repair cost," the prosecutor said: "That is correct." He asserted that allowing him "the benefit of the doubt to prove this case" constituted good cause for the continuance, and it would not be a "huge hardship" for the minor. He conceded that on the present state of the evidence, the vandalism count would be a misdemeanor.

The juvenile court ruled: "All right. I'm going to grant the request. I think [the prosecutor] was surprised by the testimony today. I think he would have finished up today, and I think it's a reasonable request to give him until tomorrow afternoon to find a witness to shore up this point. It's either going to be proven or it's not." In recounting

these facts the minor acknowledges that the court said the prosecutor was surprised, but omits the court's statement that the prosecutor would have only one day to find an appropriate witness and if he did not do so his case for felony damages would not be proven.

After the minor's counsel ascertained that the minor could be produced in court the next day at 3:00 p.m., the juvenile court adjourned for the day.

The next day, the prosecutor called Norgard, who gave the testimony summarized above. The minor's counsel had received no notice as to the witness's identity until the afternoon of the continued hearing.

B. *Analysis*

As in adult criminal proceedings, continuances in juvenile delinquency proceedings should be granted only for good cause and only for that period of time shown to be necessary by the party seeking the continuance. (Welf. & Inst. Code, § 682, subd. (b).) However, since the juvenile court's disposition must consider not only punishment but also rehabilitation (Welf. & Inst. Code, § 202, subds. (b), (d)), in ruling on a request for a continuance the court must keep in mind the dual objectives of the juvenile jurisdictional hearing: "The judge of the juvenile court shall control all proceedings during the hearings *with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought*." (Welf. & Inst. Code, § 680; italics added.) Thus, good cause for a continuance to serve these objectives may exist in a juvenile proceeding even where it might not do so on similar facts in an adult criminal proceeding. (See generally *In re Kevin S.* (2003) 113 Cal.App.4th 97, 108 [need to balance informality and flexibility appropriate to juvenile proceedings with fundamental fairness under Due Process clause].)

Whether good cause exists for a continuance rests in the sound discretion of the juvenile court. (*In re Chuong D.* (2006) 135 Cal.App.4th 1303, 1312 (*Chuong D.*).) " ' "To establish good cause for a continuance, [a party has] the burden of showing that he had exercised due diligence to secure the witness's attendance, that the witness's expected testimony was material and not cumulative, that the testimony could be obtained within a reasonable time, and that the facts to which the witness would testify could not otherwise be proven." [Citation.]' [Citation.]" (*Id.* at p. 1313.) But even if any of these conditions is not met, a minor claiming abuse of discretion from the granting of a continuance cannot win reversal unless he can show prejudice -- i.e., a miscarriage of justice caused by the continuance. (*Id.* at pp. 1306, 1311-1313; cf. Cal. Const., art. VI, § 13.)

The juvenile court granted a one-day continuance to enable the prosecutor to produce a witness who could provide "material and not cumulative" testimony that "could be obtained within a reasonable time" and would prove facts that "could not otherwise be proven." (*Chuong D., supra,* 135 Cal.App.4th at p. 1313.) This ruling was consistent with the court's mandate to ascertain the jurisdictional facts expeditiously and effectively and to obtain all available information as to the minor's present condition and future welfare so as to benefit the minor, on whose behalf the petition was brought. (Welf. & Inst. Code, § 680.)

The one *Chuong D.* factor technically unsatisfied here is a showing of "due diligence to secure the witness's attendance" (135 Cal.App.4th at p. 1313): because the prosecutor did not realize he would need to call Norgard, he did not attempt to secure her attendance before requesting a continuance. But the prosecutor showed due diligence in securing the witnesses he thought he would need; he was simply surprised by Glass's inadequate testimony. And once the prosecutor realized he needed another witness, he exercised due diligence to produce her. Thus, this factor does not count against the granting of a continuance.

It was within the juvenile court's discretion to decide that the only way to ascertain the jurisdictional facts expeditiously and effectively under the circumstances was to give the prosecutor the opportunity to produce a new witness as quickly as possible. Therefore, it is irrelevant whether the prosecutor was surprised because of inadequate preparation or some other circumstance that might have justified denying a continuance in an adult proceeding. The court was not acting to favor the prosecutor, but only to do its own job properly.

Although the minor asserts, citing *In re Maurice E.* (2005) 132 Cal.App.4th 474, 480, that "[t]he standard for granting a continuance in juvenile court is the same" as that in adult court, he relies exclusively on adult cases to attempt to show the juvenile court abused its discretion. (*People v. Howard* (1992) 1 Cal.4th 1132, 1171-1172 (*Howard*); *People v. Johnson* (1980) 26 Cal.3d 557, 570 (*Johnson*); *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1277 (*Baustert*).) Even disregarding the differences between the objectives of juvenile law and adult criminal law, these cases are easily distinguishable.

In *Johnson*, which addressed a defendant's motion to dismiss for violation of his statutory speedy trial right (26 Cal.3d at p. 569), the court set out "general principles" from prior case law to determine whether good cause exists to delay a criminal trial: "The courts agree, for example, that delay caused by the conduct of the defendant constitutes good cause to deny his motion to dismiss. [Fn.] Delay for defendant's benefit also constitutes good cause. [Fn.] Finally, *delay arising from unforeseen circumstances, such as the unexpected illness or unavailability of counsel or witnesses constitutes good cause to avoid dismissal*. [Fn.] *Delay attributable to the fault of the prosecution, on the other hand, does not constitute good cause*. [Fn.]" (*Id.* at p. 570; italics added.)

The minor asserts that the prosecutor failed to show good cause for a continuance because his surprise at the failure of Glass's testimony was due to faulty trial preparation. Without offering any record citation in support, the minor speculates: "Respondent did

not properly prepare the case and could have secured multiple witnesses under subpoena to prove the amount of damages and called each accordingly." We do not consider speculation unsupported by record citation.

In any event, the principles set out in *Johnson* cannot be divorced from their context: determining whether a violation of an adult criminal defendant's statutory speedy trial right is excusable based on good cause to continue the proceeding. In our case, there is neither an adult criminal defendant nor a speedy trial issue. However, there were "unforeseen circumstances" (26 Cal.3d at p. 570): the failure of the prosecution's witness to establish the evidentiary point he was called to establish. And even if the prosecutor was at fault for not foreseeing this possibility, in light of the juvenile court's duty to obtain the most complete possible account of both the jurisdictional facts and the surrounding circumstances (cf. Welf. & Inst. Code, §§ 202, 680), we will not find that the court abused its discretion by granting a one-day continuance to ascertain whether additional material evidence existed.

In *Howard*, the defendant did not show good cause for a continuance to call an expert witness at the end of trial because he had not shown that any expert existed who could offer material testimony within a reasonable time, and he had not been diligent to secure such witness's attendance even though the defense knew of the People's experts before trial and had had 10 days after they testified to decide whether to present a rebuttal expert. (1 Cal.4th at p. 1171.) Here, there was no such unreasonable delay, and the juvenile court imposed a "reasonable time" deadline of a single day on the prosecutor. Moreover, given the nature of the testimony here, it was clear that somebody at the Children's Home could testify to the matter unlike in *Howard*, where it was speculative that there was even an expert who could rebut the testimony of the prosecution expert.

In *Baustert* (also a case implicating the right to a speedy trial), the trial court abused its discretion by granting the People a continuance solely because an officer witness would be on vacation on the date set for trial -- even though the People had not

only failed to try to secure the officer's attendance in court on that date, but had voluntarily released the officer from a subpoena before that date. (129 Cal.App.4th at pp. 1275-1278.) The appellate court's finding that the People failed to exercise due diligence to secure the witness for the trial date (*id.* at p. 1279) has no bearing on our case, where there is neither a speedy trial issue nor a failure to secure the attendance of a witness long known to the prosecution.

For all the above reasons, defendant's claim that the juvenile court abused its discretion is not persuasive. But even if we found the granting of a continuance was an abuse of discretion, we would conclude that the minor cannot show prejudice.

The minor asserts that if the continuance had not been granted, the prosecution would have been able to prove only misdemeanor vandalism. But he cites no authority holding that a minor in a section 602 proceeding has suffered prejudice in any cognizable sense because a brief continuance enabled the prosecution to establish all the facts in support of its petition. Furthermore, the minor's argument overlooks the fact that section 602 proceedings, unlike adult criminal proceedings, are intended to benefit the minor on whose behalf the petition is brought, and that to do so the juvenile court must be able to determine what wrong the minor has actually done and what disposition might be most helpful in changing his course.

II

Sufficiency of the Evidence

The minor contends insufficient evidence supported the juvenile court's findings as to both counts.

In reviewing claims of insufficient evidence, we apply the substantial evidence standard, construing the evidence most favorably to the judgment and presuming the truth of every fact which the trier of fact could reasonably have deduced from the evidence. (*Johnson, supra,* 26 Cal.3d at p. 576.) To show that no substantial evidence supports the

judgment, an appellant may not merely recite his own evidence; he must recite all the material evidence on every point at issue and show that that evidence, construed most favorably to the judgment, is insufficient. (*Foreman & Clark v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman & Clark*).) The minor fails to meet his burden.

A. *Count 1*

The minor contends no substantial evidence supports the finding that the damage caused by his vandalism exceeded $400, as required to make the offense a felony. (§ 594, subd. (b)(1).)

On this issue, the juvenile court ruled: "[W]ith respect to the vandalism claim in Count One, I find sufficient evidence has been shown to show that the amount of damage was more than $400. The photographs themselves, at least one of them shows a vertical crack to the door . . . [E]ven though the [C]hildren's [H]ome because they have in-house personnel to do this was able to repair the door on a temporary basis[,] I don't think they were required or are required to maintain a cracked door in perpetuity. I think they're fully within their rights as any victim would be to be made whole and that's not simply a restitution issue. That's an issue as to how much damage was caused to the door. They could patch the door with duct tape but that doesn't mean they have to put up with that as a result of whatever budgetary issues they may have. So I find that the $400 threshold has been met. . . ." The minor fails to quote or paraphrase these specific factual findings, which is almost enough to forfeit his insufficient-evidence claim. (See *Foreman & Clark, supra,* 3 Cal.3d at p. 881.) Furthermore, when he does discuss the evidence, he does so in the light most favorable to himself, as we explain.

The minor relies on *In re Kyle T.* (2017) 9 Cal.App.5th 707. His reliance is misplaced.

In *Kyle T.*, a graffiti case, the only evidence for damages was a police department "graffiti removal cost list." (9 Cal.App.5th at p. 711.) The testifying officer, who based

his damages estimate exclusively on this list (*id.* at p. 715), admitted that he did not prepare it, could not identify who did, could not explain how the costs on the list were determined; and did not know the cost of materials or the number of people needed to make repairs. (*Id.* at p. 711.) The People did not offer the list, photographs of the graffiti, or any other documentation in evidence. (*Id*. at pp. 711, 715.) What should have been offered in evidence was a properly authenticated invoice of actual repair costs. (*Id.* at pp. 713-714.) The "generic, one-size-fits-all removal cost of $400 for every incident of graffiti on City-owned property" did not suffice because it was a "non-case-specific damages estimate, not an estimate tethered to the facts of Kyle's vandalism." (*Id*. at p. 714.)

Here, the evidence to prove felony damages had the traits missing in *Kyle T.* Norgard's estimate was specific to the damage caused by the minor, as documented by her photographs and the construction company's estimate based on the photographs. As a person who regularly did repairs for the Children's Home and supervised the work of others, Norgard was well-placed to assess the extent of the damage and the accuracy of the estimate she received. The minor presented nothing to show that the costs of repairing the damage would be less than that estimate, much less that they would be less than $400.

The minor asserts that "[t]he damage to the doors had been repaired," the doors were "working and functional," and the reason for the "possible and speculative replacement of the doors was cosmetic in nature." In fact, Norgard testified, and the juvenile court expressly found, that not all the damage had been repaired. The minor's account of Norgard's testimony misleads by omission so as to present the evidence in the light most favorable to himself, contrary to our standard of review. And there was nothing "speculative" about her testimony that the doors would need to be replaced: she said so unequivocally.

Finally, the minor's "cosmetic in nature" assertion simply misrepresents the record. At the page he cites, Norgard testified: "Well, they're just kind of makeshift where they do lock, but there's damage to them. There's missing parts. So part would be because of how they look, you know. If I were to do a job at my house and to repair it but it doesn't look nice . . . cosmetically. So they do function, but they should be replaced. *It's easier once someone has broken into something . . . and you repair it, it's easier for someone else to get in after that because the framework around it has been compromised*." (Italics added.) The minor fails to mention the last point, which clearly outweighed Norgard's passing reference to the doors' appearance.

The minor has failed to meet his burden as to count 1.

B. *Count 2*

The minor asserts that insufficient evidence proves his felonious intent as to count 2 because he raised a claim-of-right defense to the money he took and the People failed to rebut it. Once again, the minor fails to confront evidence in support of the judgment that the juvenile court expressly relied on.

The minor's counsel argued that the minor's intent to commit a felony when he entered the building had not been proven, in part because he believed he was entitled to the money he took ($85), which was less than the money he had in his account ($90), according to Russell's testimony. However, counsel's argument ignored the fact that the minor told the police immediately after his detention that he believed he had only $60 or $70 in his account; it also ignored the fact that Russell never testified she told the minor he had $90 in the account -- a fact the minor continues to ignore on appeal.

In rebuttal, the prosecutor pointed out the minor's statement to the police. The prosecutor also stressed the minor's conduct of "stalking in the middle of the night, taking things in the middle of the night" and kicking in a door as evidence that he could not have had an innocent intent.

The juvenile court engaged both counsel on the question whether the minor's alleged attempt to conceal the money he took defeated a claim-of-right defense. The court also asked both counsel whether it would defeat the defense if the minor took more than he thought he was entitled to.

After counsel had responded to the juvenile court's questions, the court found and ruled: "So then the only question remaining is whether or not a defense claim of right would apply to this case . . . I think there are a lot of impediments to that claim of right defense, perhaps the most significant one is simply that even if the minor believed that he was entitled to [$]60 or $70 from his account, he took more than that. And the balance of the money that he took was therefore theft and that is all that's necessary to sustain Count Two of the petition." The court made no express finding as to whether the minor concealed his taking.

A person who takes property openly and avowedly, believing in good faith that he has a lawful claim to the property taken, necessarily lacks the felonious intent to steal the property even if his belief is mistaken. (§ 511 [embezzlement]; *People v. Tufunga* (1999) 21 Cal.4th 935, 938; *People v. Hussain* (2014) 231 Cal.App.4th 261, 269.) However, neither the statute nor any case law cited by the parties extends the claim-of-right defense to a situation where a person takes more money or property than he claims to be entitled to, and we have found no case law that holds the defense viable on such facts.

Here, as the juvenile court found, the minor took approximately $85, the full sum of money in the envelope he appropriated. But, as he told the police, he believed his account held $70 at most. Thus, as to the excess over what he believed he was entitled to, he had no claim-of-right defense and his intent in taking that excess amount was necessarily felonious. Since there is no minimum dollar amount associated with misdemeanor burglary, the taking of that excess amount, however small, was therefore sufficient to support the court's true finding on count 2. Thus, we need not discuss whether the evidence shows the minor attempted to conceal his taking of the money -- a

point which the parties argue on appeal rather than addressing the finding the court actually made.

The minor has failed to meet his burden as to count 2.

DISPOSITION

The judgment is affirmed.

HULL, Acting P. J.

I concur:

MAURO, J.

MURRAY, J., Concurring.

I concur in the result, but disagree with the majority's analysis. That Glass was the wrong person to testify was clearly foreseeable. The majority, on the other hand, says this circumstance was unforeseen. Thus, the majority appears to employ a subjective standard instead of an objective standard. If the prosecutor did not actually foresee the need for a different witness who could establish elements of the offense and instead brought in someone who was clueless as to the necessary facts, then the diligence requirement has been satisfied. I disagree with that analysis, but my disagreement does not change the result.

The majority looks to *People v. Johnson* (1980) 26 Cal.3d 557, a speedy trial case involving an adult defendant, insufficient public defender resources and court congestion. There, our high court reasoned that, "delay arising from *unforeseen circumstances, such as the unexpected illness or unavailability of counsel or witnesses* constitutes good cause to avoid dismissal. *Delay attributable to the fault of the prosecution, on the other hand, does not constitute good cause*." (*Id*. at p. 570, fns. omitted, italics added.) While the court used the word "unforeseen" instead of "unforeseeable," the court provided examples of the type of circumstances that would justify a delay, specifically unexpected illness or unexpected unavailability of counsel or witnesses. Additionally, later in the opinion, the court stated that in determining good cause, "the court must inquire into whether the delay is attributable to the *fault or neglect* of the state; if the court so finds, the court must dismiss." (*Id.* at p. 573, fn. omitted, italics added.) In other words, if the issue here was statutory speedy trial, which requires mandatory dismissal, we must consider fault or neglect. The implication by the majority that a prosecutor must actually foresee the circumstance necessitating the continuance when that circumstance is objectively foreseeable sends the wrong signal and could result in unintended consequences, particularly in cases involving speedy trial objections. Had the prosecution spoken to its witness before wasting the court's time with testimony from a

witness who clearly did not have personal knowledge, there would have been no need for the continuance. Under the circumstances, I see the continuance here as "attributable to the fault of the prosecution" (*ibid*.) as contemplated by the court in *Johnson*.

However, *Johnson* is a speedy trial case and the minor here did not object on speedy trial grounds.[1] While a continuance mid-trial requires a showing of good cause, the decision to grant a continuance mid-trial involves different considerations. As the minor points out, our high court has stated: " 'The granting or denial of a motion for continuance in the midst of a trial traditionally rests within the sound discretion of the trial judge who must consider not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on other witnesses, . . . and the court and, *above all, whether substantial justice will be accomplished or defeated by a granting of the motion*.' " (*People v. Zapien* (1993) 4 Cal.4th 929, 972 (*Zapien*), italics added [a defense request for midtrial continuance properly denied].)

While a higher degree of diligence by the prosecutor could have avoided the wasted time in the trial court (and the time and resources devoted to this appeal), this case is unlike in *In re Chuong D*. (2006) 135 Cal.App.4th 1303, upon which the minor relies, where the appellate court found that the prosecutor failed to demonstrate "*any* diligence" (*id*. at p. 1313). Here, the prosecutor made a mistake, and I agree with the majority that the given the juvenile court's duty under Welfare and Institution's Code section 680 to ascertain "*all information* relative to the present condition and future welfare of the

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[1] The minor cites trial counsel's objection in the juvenile court, but at no time did trial counsel object on speedy trial grounds. Nor did the minor rely on speedy trial requirements in his opening brief; rather he relied upon Welfare and Institutions Code section 682 (requiring good cause for a continuance), California Rules of Court, rule 5.776 (also requiring good cause for continuances and identifying circumstances requiring a continuance), and due process. Nor do I see how the minor could object on speedy trial grounds, since there is no allegation the hearing here did not start within the prescribed statutory time limit or the matter was continued beyond that time limit.

person upon whose behalf the petition is brought" (Welf. & Inst. Code, § 680, italics added), the juvenile court did not abuse its discretion in effectively excusing that mistake and allowing the continuance so the court could obtain *all* of the relevant information. The juvenile court's duty under section 680 is a circumstance not present in the speedy trial cases, but it is certainly a consideration in determining " 'whether *substantial justice will be accomplished* . . . by a granting of the motion" (*Zapien, supra*, 4 Cal.4th at p. 972, italics added) for a midtrial continuance.

Moreover, as the majority notes, a showing of prejudice is required to warrant reversal. (Maj. opn., *ante*, p. 7.) The minor asserts that he was prejudiced because the prosecution was able to prove the monetary amount of damage as a result of the continuance. This is insufficient to warrant reversal. (See *Chuong, supra*, 135 Cal.App.4th at pp. 1311-1312 ["the mere fact that evidence sufficient to establish a prosecutor's case was introduced against the defendant only *after* his speedy trial rights were violated could never be considered the requisite prejudice to justify reversal of the judgment"].)

The continuance here was only one day. There is nothing in the record indicating surprise from Norgard's testimony concerning the damage. Nor is there anything in the record indicating the minor needed more time to respond to Norgard's testimony, was deprived from presenting evidence to refute the testimony or that the continuance impaired his ability to present a defense.

I concur with the majority's result. Granting of the continuance here is not grounds for reversal.

MURRAY, J.